THE HON'BLE SRI JUSTICE S. RAVI KUMAR

CRIMINAL PETITON No.1473 of 2006

Date:23.04.2014

Between:

Chintakuntla Sudhakar Reddy

..... Petitioner.

AND

The State of Andhra Pradesh,
rep by its Public Prosecutor,
High Court of A.P., Hyderabad.

.....Respondent.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

CRIMINAL PETITON No.1473 of 2006

ORDER:

This revision is preferred against judgment dated 29-08-2006 in Crl.A.No.62/2005 on the file of II Additional District & Sessions Judge, Nalgonda whereunder judgment dated 08-04-2005 in S.C.No.19/2004 on the file of Assistant Sessions Judge, Suryapet was confirmed.

2. Brief facts leading to filing of this revision are as follows:-

Inspector of Police, Kodad filed charge sheet against

revision petitioner alleging that on 03-07-2003, at about 11:00 A.M., accused went to the house of complainant and introduced himself as Sudhakar Reddy and when the complainant did not recognise him, he informed her that her family members and family members of accused previously resided in a rented house side by side and on that complainant recollected her memory and asked accused to sit and thereafter, gave a cup of tea and later talked about their well-beings and when the defacto-complainant went into the kitchen for preparation of food, accused took a plastic wire, followed her and put the wire around her neck, closed her mouth and tried to snatch away gold chain with mangalasutrams from her neck and victim resisted and caught hold of the collar of the accused and raised cries. On hearing the same, neighbours

P. Swathi and B. Laxmi rushed there and on seeing them, the accused ran away from the house and on the report of victim, police registered Crime No.95/2003 and investigation revealed that the accused committed offence under Section 393 IPC, but the Court below took cognizance for the offence under Sections 393 & 307 IPC. During trial, eight witnesses are examined and four documents are marked besides four material objects. On a over all consideration of oral and documentary evidence, trial Court found accused guilty for both the offences and sentenced him to suffer five years imprisonment with a fine of Rs.200/- for the offence under Section 393 IPC and five years imprisonment with a fine of Rs.200/- for the offence under Section 307 IPC.

Aggrieved by the same, accused preferred appeal to the Court of Session, Nalgonda and II Additional District & Sessions Judge, Nalgonda at Suryapet on a reappraisal of evidence, confirmed conviction and sentence. Now aggrieved by the same, present revision is preferred.

3. Heard both sides.

4. Advocate for revision petitioner submitted that as per the evidence on record, police reached scene of offence by 11:30 A.M itself, whereas, F.I.R was registered at 3:00 P.M., and this discrepancy would throw any amount of doubt as to the correctness of the prosecution case. He further submitted that as the accused was moving closely with the daughter of defacto-complainant, this case is foisted.

He further submitted that there is no evidence attracting ingredients of Sections 307 & 393 IPC and both the Courts erred in convicting the revision petitioner.

On the other hand, learned Public Prosecutor submitted that evidence of P.Ws.2 & 3 who are independent witnesses supports version of P.W.1 and that there are no discrepancies or contradictions in their evidence, and both trial Court and appellate Court have rightly appreciated evidence on record and that there are no grounds to interfere with the concurrent findings.

5. Now the point that would arise for my consideration is whether judgments of the Courts below are legal, proper and

correct?

6. **Point:**- According to prosecution, accused and the family members of the defacto-complainant previously resided in a rented house side by side and that on 03-07-2003, the accused went to the house of defacto-complaint around 11:00 A.M., as she did not recognize him, he introduced himself by apprising defacto-complainant about their stay in side by side houses and that she recollected her memory and asked the accused to sit and offered a cup of tea and both of them chatted about their welfare and other things and when defacto-complainant went into kitchen room for preparation of food, the accused followed her put a plastic wire around her neck, closed her moth and tried to snatch away gold chain with mangalasutrams from her neck and when the victim raised cries, P.Ws.2 & 3 came there and on seeing them, the accused ran away. Defacto-complainant examined as P.W.1 reiterated the averments of her complaint, which is marked as Ex.P1, she narrated the incident in sequence, which revealed that the accused came to her house on the morning hours of 03-07-2003, made an attempt to commit theft of her gold chain with mangalasutrams. According to prosecution, when P.W.1 raised cries, P.W.3 and another rushed there. P.W.3 deposed that on the date of the incident at about 11:30 A.M., on hearing the cries of P.W.1, she came out of her house and found the accused coming out of the house of P.W.1 and when she enquired P.W.1, she revealed the incident.

Prosecution examined another eye-witness-P.W.2 who is an employee in the sweet shop of husband of P.W.1. He deposed that on the date of the incident, on the instructions of his master, he went to his master's house at 11:30 A.M., to bring biscuit cartoon from the house and at that time, he found the accused sitting in a chair and taking tea in the house of his master and that he collected biscuit cartoon and tied it to his cycle and went to the shop and later he came to know about the incident. Husband of P.W.1 was examined as P.W.4 who also supported the version of P.W.2. According to prosecution, the accused while running away from the house of defacto-complainant, left his chappals and those were seized by the police in the presence of P.W.5 and another. This mediator was examined as P.W.5, he deposed that on 03-07-2003, at about 4:00 P.M., he was present when police inspected the scene of offence and at that time, they found a pair of chappals in the waranda and also two buttons in the kitchen room and that the police have seized those articles under cover of a mediator report. Medical officer examined as P.W.6 deposed that he examined P.W.1 at about 5:00 P.M., and found contusion measuring 6 x 1/4th inch in front of neck and scratch marks and all those injuries might have been caused by a sharp edged weapon and scratches are possible by nails and also by plastic wire and that he issued Ex.P3-certificate. This evidence would show that the accused went to the house of P.W.1 on the date of the incident at about 11:00 A.M and

when P.W.1 went inside the kitchen to cook food, he followed her and kept a plastic wire around her neck and tried to snatch away her gold chain with mangalsutrams and as P.W.3 and another arrived there on hearing the cries of defacto-complainant, he left the place. So the evidence on record would disclose the acts committed by the accused, which would attract attempt to commit robbery under threat.

7. The other charge against the revision petitioner is that he made an attempt to kill the defacto-complainant, but P.W.1 has not stated anything in her evidence that the revision petitioner made an attempt to kill her. This act of putting plastic wire around the neck of the victim is only in the process of his attempt to commit theft of gold chain and there is no evidence for the allegation of attempt to murder. Even P.W.3 has not stated anything about and according to her evidence she noticed accused coming out of the house of P.W.1 and went there on hearing the cries of P.W.1, P.W.2 also stated that he noticed the presence of revision petitioner in the house of P.W.1, therefore, as rightly pointed out by the counsel for the petitioner, there is absolutely no evidence for the offence under Section 307 IPC. Even the medial officer has not stated that the injury found on the body of P.W.1 is sufficient to cause death in normal course. So without any such material, the conviction of the revision petitioner for the offence under Section 307 IPC cannot be sustained.

8. So far as conviction under Section 393 IPC is

concerned as already referred above, the evidence on record would clearly disclose that accused committed the act to snatch away gold chain with mangalsutrams of P.W.1 and both trial Court and appellate Court have rightly convicted the revision petitioner for the offence under Section 393 IPC. On a scrutiny of the evidence on record, I am of the view that both Courts have not committed any error in convicting the revision petitioner for the offence under Section 393 IPC and as such the same cannot be interfered.

9. For the reasons stated above, the conviction against the revision petitioner for the offence under Section 393 IPC is to be confirmed, but the conviction for the offence under Section 307 IPC is liable to be set aside

10. Coming to the sentence part, trial Court sentenced the revision petitioner to suffer five years imprisonment with a fine of Rs.2,00/- for the offence under Section 393 IPC. From the evidence, it is clear that revision petitioner is a Teacher by profession and the offence under Section 393 IPC is punishable with imprisonment for a term, which may extend to seven years and with a fine.

11. Considering the facts of the case, evidence on record and the fact that the revision petitioner is not a habitual offender, I feel that the sentence of five years imprisonment for the offence under Section 393 IPC can be reduced to one year while confirming the fine amount.

12. With this modification, revision has to be disposed of.

13. In the result, revision is partly allowed by setting aside the conviction for the offence under Section 307 IPC while confirming conviction for the offence under Section 393 IPC and sentence of imprisonment is reduced to one year from five years.

14. The trial Court shall take steps for apprehension of the revision petitioner for undergoing unexpired portion of the sentence.

15. As a sequel, miscellaneous petitions, if any, pending in this Criminal Revision Case shall stand dismissed.

JUSTICE S. RAVI KUMAR

Date:23.04.2014

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